United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

76-1355

To be argued by
IVAN MICHAEL SCHAEFFER

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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P&S

UNITED STATES OF AMERICA,
APPELLEE

v.

RICHARD JOSEPH TODARO,
APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

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TABLE OF CONTENTS

Cases (cont'd):

Cases (cont'd): Page

Statutes:

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Appellee

v.

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Appellant

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BRIEF FOR THE UNITED STATES

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to sustain a conviction for paticipation in an illegal gambling business (18 U.S.C. §1955).

2. Whether the evidence was sufficient to sustain a conviction for destroying property to prevent its seizure by F.B.I. agents engaged in executing a valid search warrant. (18 U.S.C. §2232).

3. Whether the district court abused its discretion in sentencing appellant to a longer sentence than the others involved in a gambling business.

4. Whether the dismissal of a conspiracy count requires an acquittal of a substantive count.

STATUTORY PROVISIONS INVOLVED

1. 18 U.S.C. §1955 provides in pertinent part:

> (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.
>
> (b) As used in this section -
>
> (1) "illegal gambling business" means a gambling business which -
>
> (i) is in violation of a law of a State or political subdivision in which it is conducted;
>
> (ii) involves five or more persons who conduct, finance, manage, supervise, direct or own all or part of such business; and
>
> (iii) has been or remains in substantially continuous operation for a period of excess of thirty days or has a gross revenue of $2,000 in any single day.
>
> (2) "gambling" includes but is not limited to . . . bookmaking.

2. 18 U.S.C. §2232 provides:

> Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure of securing

of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

STATEMENT

Following a jury trial in the United States District Court for the Western District of New York (Curtin, J., presiding) appellant was convicted on two counts of a three count indictment charging conspiracy to engage in an illegal gambling business (Count One); unlawfully conducting an illegal gambling business (Count Two); and unlawful destruction of flash paper to prevent its seizure by an F.B.I. agent engaged in the execution of a valid search warrant (Count Three), in violation of 18 U.S.C. §§371, 1955, and 2232 (App. 1a). At the close of the evidence the court dismissed the conspiracy count (Tr. 728; App. 6a, 728) and the jury returned guilty verdicts on the two remaining counts of the indictment (Tr. 925-26; App. 968-69). Appellant was sentenced to a three year term of imprisonment on Count Two of the indictment and to a concurrent sentence of one year on Count Three (Tr. 948; App. 991).

In brief, the evidence at trial showed that in February 1972, Anthony Castellani, Stephen Castellani (Anthony's father) and Richard Giglia (Anthony's cousin) received sporting "line" information over a telephone located at an apartment on Ontario Street

in Buffalo, New York from appellant; that this information was used to operate a betting business at three locations in the Buffalo area (the Ontario apartment, the Kenmore News Shop and the Riverside Newsstand); that this business had a gross revenue of over $2000 on seven of the days on which the information was furnished; that Anthony Castellani, Stephen Castellani and Richard Giglia accepted bets over the telephone at the Ontario apartment; that Anthony Castellani, Stephen Castellani, Richard Giglia, John Zak, Joseph Salvagnia, and Sarge Sapienza accepted bets at the Kenmore News Shop; that Anthony Castellani and Sam Giglia (Richard's brother) accepted bets at the Riverside Newsstand; and that Stephen Castellani paid appellant weekly for his services.

A. The Illegal Gambling Operation.

In particular, the evidence at trial showed that on February 16, 19, 20, 21, 22, 23, 25, 26 and 27, 1972 appellant furnished sporting line information by telephone to Anthony Castellani, Stephen Castellani and Richard Giglia at the apartment of Julia Martin on Ontario Street in Buffalo. (Gov't. Ex. 60 at 1-2, 7-9, 13-17, 33-35, 42-44, 48-50, 58-60, 66-67, 72-75, 83-84).[1/] Anthony Castellani was a bookmaker in February 1972 and, as such, accepted

1/ The government conducted an electronic surveillance the telephone on Ontario Street between February 18 and February 27, 1972 under a court order. (Tr. 88-89; App. 88-89).

bets on horseracing, basketball and football. Each day he would go to Ontario Street in Buffalo between 5:30 and 6:00 p.m. to accept bets coming in over the telephone as well as receiving line information. Richard Giglia would also take bets at Ontario Street in addition to those which he received over the counter at the Kenmore News Shop (Tr. 446-449, 451, 458-461; App. 446-449, 451, 458-461). Anthony and Sam Giglia also accepted bets at the Riverside Newsstand in Buffalo, (Tr. 199-202, 206-207, 227 312; App. 199-202, 206-207, 227, 311), a place that he and Giglia owned.

During Febrary 1972, Anthony Castellani also went to the Kenmore News Shop daily between 10:30 and 11:00 a.m. to check on the wagering activity of the previous evening. The Shop itself was owned by Stephen Castellani and Richard Giglia who together with John Zak, Sarge Sapienza and Joseph Salvagnia accepted bets over the counter there. (Tr. 194, 220, 222-223, 351-353, 357-358, 446-447, 462-465, 506; App. 194, 220, 222-223, 351-353, 357-358, 446-447, 462-465, 506).[2/]

In his daily visits, to Kenmore, Anthony would instruct Richard Giglia who to pay and in what amount after the former had

2/ Zak who obtained line information from Julia Martin's boyfriend in New York.

checked the betting slips. Following his tabulations, Anthony would return to the Riverside Newsstand (Tr. 191-195, 209-211, 214-215; App. 191-195, 209-211, 214-215). 3/

Stephen Castellani also accepted horse bets over a telephone located in the suburb of Depew and Anthony would operate the Depew telephone in his father's absence (Tr. 363-364; App. 363-364). Anthony Castellani and Sam Giglia also "layed off" large bets that they received with Stephen Castellani and Richard Giglia on a fifty-fifty basis (Tr. 348, 375-376, 466; App. 348, 375-376, 466).

Anthony Castellani did not receive a regular salary for his activities at the Kenmore Newsstand from either his father or cousin, Richard. However, he did receive $40 or $50 a week when he helped them and was paid for taking telephone bets at the Ontario Street location (Tr. 219, 381, 418, 468, 514; App. 219, 381, 418, 468, 514).

An analysis of the tapes compiled as a result of electronic surveillance on the dates on which appellant provided the sport line information disclosed the following volume of betting activity: 4/

3/ Stephen Castellani was sick during this period.

4/ Appellant did not provide Castellani with a sports line on February 18, 24 or 26 and no sports bets were accepted on these dates (Tr. 529-530, 536-538; App. 529-530, 536-538).

Date	Sports Wagers	Horse Wagers	Total
February 16, 1972	2,210	1,468	3,678
February 17, 1972	330	1,259	1,589
February 18, 1972	--	1,270	1,270
February 19, 1972	4,205	1,013	5,336
February 20, 1972	405	--	405
February 21, 1972	2,330	1,184	3,514
February 22, 1972	1,570	660	2,233
February 23, 1972	1,940	1,429	3,369
February 24, 1972	--	778	778
February 25, 1972	2,500	1,511	4,011
February 26, 1972	4,075	1,945	6,020
February 27, 1972	1,255	20	1,275
February 28, 1972	--	931	931
February 29, 1972	--	1,064	1,064

B. Destruction of Flash Paper.

On March 5, 1972, a search warrant was issued by the United States Magistrate for appellant's person and his home at 52 Bannard Street, Tonawanda, New York. 5/ The warrants authorized agents of the F.B.I. to search for flash paper. Shortly before 10:00 a.m.

5/ On the same day, search warrants were issued for Richard Giglia and the premises of the Kenmore News Shop. These warrants were executed on March 6, 1972. (Tr. 84-85, 87-89, 93-95; App. 84-85, 87-89, 93-95).

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on March 6, 1972, Special Agents George Fellows and James Caufield went to appellant's home and parked their car in the driveway. The agents proceeded to the front door; they then rang the doorbell, knocked on the door, and announced that they were F.B.I. agents present to execute a search warrant. When no one came to the door, Agent Fellows went to the rear of the house while Agent Caufield remained at the front of the house. When Fellows found the rear door unlocked, he entered the premises and again announced himself stating that he was present to execuţé a search warrant.

Fellows then opened the front door for Caufield and both agents then made a cursory search of the first floor which revealed no one. The agents then ascended a flight of stairs announcing for the third time that they were agents with a warrant. The second floor of appellant's house had a number of bedrooms, and upon entering the master bedroom Fellows saw appellant leap from his bed, run approximately five feet across the room to a small desk and "the next thing I observed was a flash of flames approximately four feet in height and probably a foot in diameter" (Tr. 611; App. 611). When agents entered the bedroom, to extinguish the flames, nothing remained. Fellows saw the flames from the doorway. He said that the flame was instantaneous, lasting two seconds, that the flame formed a bright reddish-orange column,

and the fire left no residue or ashes. (Tr. 609-614; App. 609-614). All of these characteristics are indicia that the substance which burned was flash paper - a type of paper used by gamblers to destroy gambling records rapidly (Tr. 538-540; App. 538-540).

ARGUMENT

I. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE CONVICTION FOR PARTICIPATION IN AN ILLEGAL GAMBLING BUSINESS IN VIOLATION OF 18 U.S.C. §1955.

Appellant claims that the evidence was insufficient for various reasons: he contends that the furnishing of "line" information is not a prescribed activity within the terms of the statute; that the government failed to prove the occurance of a sporting event as required by the New York State statute; and that the government failed to prove that five or more persons were engaged in an unlawful gambling operation. We submit that this Court should reject these contentions as they are all without merit.

1. A person who knowingly furnished "line" information to an illegal gambling business may properly be convicted under 18 U.S.C. §1955.

In enacting 18 U.S.C. §1955, Congress intended to reach all individuals who made a large bookmaking operation (five or more persons with a $2000 gross on any day or of 30 days or more duration) possible. As this Court said in United States v. Becker, 461 F.2d 230, 232 (1972), cert. denied, 420 U.S. 776 (1974), the Congressional intent was thus to include, "all those who participate in the operation of a gambling business, regardless of how minor their roles and whether or not they be labelled agents, runners, independent contractors or the like, and to exclude only

customers of the business" (emphasis in original). See also United States v. Box, 530 F.2d 1258, 1264 (5th Cir. 1976).

The furnishing of line information to bookmakers is a necessary service that makes bookmaking possible. 6/ The bets on sporting events are made on the basic of the point spread or odds that the line information provides. Unless the bookmaker knows the point spread or the odds on a sporting event, he cannot properly conduct his business.

Nor is it necessary in this case for the court to determine whether the person who furnishes line information may be counted as one of the five persons necessary for an offense under 18 U.S.C. §1955. See United States v. Guzek, 527 F.2d 552, 557-558 (8th Cir. 1975). As we argue below, there were more than five others in the gambling operation in the instant case. Rather it is sufficient, and the evidence here shows, that appellant knowingly provided them a necessary service. 7/

6/ The jury was instructed to find that it was a necessary service (Tr. 947-948; App. 947-948).

7/ Whatever the correctness of United States v. Leon, 534 F.2d 667 (6th Cir. 1976) upon which appellant relies, unlike there, the evidence here, and the jury found, that appellant became an integral part of the gambling operation by providing a necessary service.

The line being provided by appellant and for which he received pay was not, despite his assertions to the contrary, non-essential and the same line as could be obtained from various sporting publications or daily newspapers. To the contrary, the line provided to the Castellanis by appellant contained more precise up-to-date information concerning not only point spreads and odds but also which games to accept bets on and which games to avoid. Appellant's contention that he provided only an incidental service which was available from a myriad of other sources is disingenous. As F.B.I. Special Agent William L. Holmes testified:

> Well, if a bookmaker doesn't have a line that he can depend upon, there are a couple of things that could happen. One is that for instance if the line is old, there is a line that is printed in the newspaper. I believe, by Jimmy the Greek. This line is anywhere from 24 to 36 hours old. This line is Jimmy the Greek's opinion. He has nothing to, - he will not accept wagers against it. A bookmaker will not accept the line as being reliable unless uou can bet against it. A line that is printed in the newspaper also does not have any variance, it will not change, where a bookmaker must have a current line in order to adjust it in case something happens such as, oh, there is a current injury to one of the key players in the game. He wants to adjust his line, either take the game off the board, put it in a circle and limit the amount of wagering against it, or else he will increase the amount of money, the vigorish that he charges for accepting a wager on that type of game. [Tr. 531-532; App. 531-532].

Appellant's assertion that he only provided the line on a handful of days during the intercept period is weak at best. During the period of electronic surveillance appellant provided the line on all but three days -- there is no reason to believe he did not provide the line before February 16, 1972 or after February 29, 1972. 8/ In fact Stephen Castellani testified he paid appellant for the line weekly (Tr. 475-476; App. 475-476) and the logical inference is that appellant was long involved in the Castellani operation.9/

2. Appellant's argument that the government failed to prove that five or more people were involved in an illegal gambling

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8/ Agent Holmes, after reviewing the tapes determined that the line was not given to the Castellani operation on three dates during the period of electronic surveillance: February 18, 24 and 28, 1972. On none of these dates were sports wagers accepted by Anthony Castellani. (Tr. 537-538; App. 537-538). This further diminishes appellant's contention that the line he provided was obtainable from the newspapers or other sources in that without his line, on three separate dates, no sports wagers were accepted. Sports wagers were accepted, however, on every day which appellant did provide a member of the Castellani operation with the line. During the period of 14 days, this operation took in $23,600 in bets.

9/ Furthermore, the amount of time for which appellant was engaged in providing line information does not excuse him from the operation of the section. Once the size of operation ($2000 a day) or continuity of operation (30 day) requirements have been met -- as they were here (See p. 7, supra) -- it is not necessary to prove the separate involvement of a party for over 30 days. United States v. Manifield, 515 F.2d 877 (5th Cir. 1975). At all events, on seven days on which appellant provided the Castellani operation with the line their gross wagers exceeded $2000. See p. 7, supra.

operation as required by 18 U.S.C. §1955 rests on the premise that there were two separate gambling businesses, one operating from the Kenmore News Shop and the other from the Riverside Newsstand. In United States v. Schaefer, 510 F.2d 1307, 1312 (8th Cir.), cert. denied, 421 U.S. 978 (1975), the court in considering a similiar contention said:

> The interdependence of the various individual components, including the sharing of line information and the exchanging of profits through layoff betting, outweighs the 'independent businessmen' theory urged by appellants and satisfies us that there was one 'illegal gambling business' here for the purposes of 18 U.S.C. §1955.

See also United States v. Guzek, supra, 527 F.2d at 557. We submit, as our Statement shows, that in the instant case the betting at Kenmore, Riverside and the Ontario apartment were similiarly interdependent.

In determining the number of persons involved in a gambling operation as we have pointed out, only mere betters or customers of the bookmaker are excluded from the scope of 18 U.S.C. §1955. United States v. Box, supra; see also United States v. Joseph, 519 F.2d 1068 (5th Cir. 1975); United States v. Jones, 491 F.2d 1382 (9th Cir. 1974); United States v. Sacco, 491 F.2d 995 (9th Cir 1974). The evidence here was clearly sufficient for the jury to find one interdependent gambling operation involving the following people: (1) Stephen Castellani; (2) Anthony Castellani; (3) Richard

Giglia; (4) Sammy Giglia; (5) John Zak; (6) Sarge Sapienza; (7) Joseph Salvagnia; and (8) appellant. Each of these individuals were engaged in roles which have traditionally been deemed sufficient for inclusion in determinating whether five or more people are engaged in an illegal gambling operation. See, e.g., United States v. Box, supra; United States v. Calaway, 524 F.2d 609 (9th Cir. 1975); United States v. Joseph, supra; United States v. Schaefer, supra; United States v. DeCesaro, 502 F.2d 604 (7th Cir. 1974); United States v. McHale, 495 F.2d 15 (7th Cir. 1974); United States v. Sacco, supra; United States v. Meese, 479 F.2d 41 (8th Cir. 1973); United States v. Hunter, 478 F.2d 1019 (6th Cir.), cert. denied, 409 U.S. 977 (1973).

There was a clear basis, therefore, for the jury to find, in accordance with the district court's instructions (Tr. 944-945; App. 944-945), that there was one interdependent gambling operation.

3. Appellant's further contention that the government failed to prove that the sporting events on which appellant provided line information actually took place is clearly refuted by the record. Appellant bases this contention on the decisions in People v. Abelson, 309 N.Y. 643 (1956) and United States v. Fiorella, No. 1971-45 (W.D.N.Y., March 8, 1972). Appellant asserts that in order to prove that the events on which the Castellanis took bets in fact actually occurred the government would have to introduce

a daily newspaper to show the results of the events on which the line was provided. See New York Penal Code, §225.35(2). In fact, the government showed through the testimony of Anthony Castellani that the events on which he took wagers actually occurred. Castellani testified that each morning he would go into the bathroom at the Riverside Newsstand to check the betting slips from the previous day to determine which betters were owed money (Tr. 208-209; App. 208-209). Castellani stated further:

> The first thing I would do is get the Courier [Express (a sports publication)] and then as I says, I would go in the bathroom and I would check out the slips that I received that previous day from during the day and I would make out a list [of those who were to be paid]. [Tr. 211; App. 211].

Thus, the government established the occurrance of the events on which appellant provided the line to Castellani.

II. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THAT APPELLANT DESTROYED PROPERTY TO PREVENT ITS SEIZURE BY F.B.I. AGENTS ENGAGED IN EXECUTING A VALID SEARCH WARRANT.

Appellant contends that the evidence was insufficient to establish that he destroyed flash paper to prevent its seizure by the F.B.I. agents who were present at his home to execute a search warrant. The evidence, which is set-forth at pages 7-9, supra, established that F.B.I. Special Agents Fellows and Caufield went to appellant's home to execute a search warrant for flash paper. The agents attempted to gain entry through the front door, received no response, and ultimately entered the residence through an open rear door. They announced their presence and purpose at the front door, upon entering the rear door, and again upon going upstairs to the second floor of appellant's house.[10/] Upon arriving at the entrance to appellant's bedroom, Agent Fellows saw appellant leap from his bed, run across the room to a de and then saw a bright flash of flame which was the ignition of flash paper (Tr. 609-614; App. 609-614). This act of destroying the flash

10/ The evidence is unclear as to whether Agent Fellows announced his presence by saying "F.B.I." or "F.B.I. Search warrant." Fellows testified that he used the latter phrase, however, on cross-examination he conceded that he did not specifically remember whether he announced that he had a search warrant. He did, however, have no doubt that he announced that he was an F.B.I. agent (Tr. 609-614, 622-626; App. 609-614, 622-626).

paper constituted a clear violation of 18 U.S.C. §2232 and provided ample basis for the jury to find, as the court instructed that it must, that the government had proven that appellant was aware "under the circumstances [that] . . . the agent had a search warrant" (Tr. 953; App. 953), in order to correct appellant. See United States v. Gibbons, 463 F.2d 1201 (3rd Cir. 1972).

The agents announced their presence no less than three times. When they reached appellant's bedroom his first action was to destroy the flash paper on his desk. The logical inference to be drawn from appellant's action in destroying the flash paper was his fear that it was going to be seized by the agents. Fearing seizure of this flash paper appellant leaped across the room to assure that he could ignite the flash paper prior to its seizure. This presence of mind and purpose -- and deliberate destruction of property -- is totally inconsistent with appellant's assertion that he was sleeping at the time of the agent's entry to his residence (Brief for Appellant at 41) and was somehow thereby unaware of the purpose of the agents' presence. It is clear that appellant fully intended to destroy the flash paper, which was the subject of the agent's search warrant, to prevent the seizure by the agents.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN SENTENCING APPELLANT TO A GREATER SENTENCE THAN THAT GIVEN TO OTHER MEMBERS OF THE ILLEGAL GAMBLING OPERATION.

Appellant contends that the district court abused its sentencing discretion in imposing a harsher sentence upon him than that imposed on the others involved in the illegal gambling operation. Each of the other individuals sentenced for their involvement in the gambling operation were given suspended sentences, fines or probation while appellant was sentenced to three years' imprisonment on Count II (18 U.S.C. §1955) of the indictment with a one year concurrent sentence on Count III (18 U.S.C. §2232) of the indictment. 11/

The scope of the sentencing judge's discretion has been recognized on many occasions by this Court. In United States v. Sweig, 454 F.2d 181, 183-184 (2nd Cir. 1972) this Court stated:

> A sentencing judge has very broad discretion in imposing any sentence within the statutory limits, and in exercising that discretion he may and should consider matters that would not be admissible at trial.

Similarly, In United States v. Tucker, 404 U.S. 443, 446 (1972), the Supreme Court observed that "[i]t is surely true . . . that

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11/ Stephen Castellani, Anthony Castellani, Richard Giglia, Sam Giglia, and John Zak all entered guilty pleas to indictments charging use of a telephone to facilitate gambling in violation of 18 U.S.C. §1084(a).

a trial judge in the federal judicial system generally has wide discretion in determining what sentence impose." See also, United States v. Vermeulen, 436 F.2d [illegible] (2nd Cir. 1970), cert. denied, 402 U.S. 911 (1971). Similarly the courts have uniformly held that sentences imposed by federal district judges, if within the statutory limits, are not, absent a plain showing of gross abuse, subject to appellate review. United States v. Tucker, supra, 404 U.S. at 447; Gore v. United States, 357 U.S. 386, 393 (1958); cf. Yates v. United States, 356 U.S. 363 (1958); Williams v. New York, 337 U.S. 241 (1949); United States v. Dzialak, 463 F.2d 221 (2nd Cir. 1972), cert. denied, 409 U.S. 452 (1973) (court of appeals is without authority to review severity of sentence).

Appellant was sentenced to a term of imprisonment well within the five year statutory maximum provided for by Congress. There is no indication that the sentencing judge exercised any abuse of his discretion or that he was in anyway prejudiced against appellant. Nor is there any suggestion here that appellant received a more severe sentence because he stood trial as occurred in United States v. Wiley, 278 F.2d 500 (7th Cir. 1960), upon which appellant relies. In short, the mere fact that appellant received a harsher sentence for violating 18 U.S.C. §1955 than did his confederates for violating 18 U.S.C. §1084(a) does not demonstrate any abuse of the district court's sentencing discretion.

IV. THE DISTRICT COURT'S DISMISSAL OF THE CONSPIRACY COUNT DOES NOT REQUIRE THE GRANTING OF A DIRECTED VERDICT OF ACQUITTAL ON THE SUBSTANTIVE GAMBLING COUNT OF THE INDICTMENT.

Finally, appellant contends that the district court was compelled to grant his motion for a directed verdict of acquittal on the substantive gambling count of the indictment (18 U.S.C. §1955) following its dismissal of the conspiracy count. At the close of the government's case the district court dismissed the conspiracy count (Tr. 729; App. 729). 12/ We believe that the district court erred in dismissing the conspiracy count. However, even assuming the court to have been correct in its ruling we are aware of no authority to support appellant's novel contention that this requires the dismissal of the substantive count of the indictment. In fact, the law is to the contrary. See, e.g., United States v. Feola, U.S. , 95 S.Ct. 1255, 1259 (1975) (conspiracy and substantive convictions may be had separate of each other). As the Supreme Court there stated: "It is well settled that the law of conspiracy serves ends different than, and complementary to, those served by criminal prohibitions of the substantive offense." For

12/ The court apparently dismissed the conspiracy count under one of two theories: (1) either based on the fact that the same evidence was required to prove both the conspiracy and substantive counts, or, (2) since the government failed to show that appellant was aware that five or more other persons were involved in the gambling operation. (Tr. 728-729; App. 728-729). However, the district court did not elucidate on which theory it chose to follow.

this reason convictions for violations of the criminal substantive law are independent of those for violating the conspiracy law and appellant's §1955 conviction must stand. 13/

CONCLUSION

The conviction of appellant should, therefore, respectfully be affirmed.

Respectfully submitted,

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13/ Whether appellant is found to be a member of a conspiracy or not does not change the fact that his conduct at the very least was in aid and furtherance of the gambling operation in that the business could not be conducted without the type of advanced line information which appellant provided. As the Supreme Court noted in Pereira v. United States, 347 U.S. 1, 11 (1953), "Aiding, abetting, and counseling are not terms which presuppose the existence of an agreement. Those terms have a broader application, making the defendant a principal when he consciously shares in a criminal act, regardless of the existence of a conspiracy." See also Nye & Nissen v. United States, 336 U.S. 613, 620 (1949).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief for the United States were served upon Harold Price Fahringer, Esq., Lipsitz, Green, Fahringer, Roll, Schuller & James, One Niagra Square, Buffalo, New York 14202, by placing copies thereof in the United States mail, postage prepaid, this 19th day of November, 1976.

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